

**THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

In re:

Catherine L. Moreno,

Debtor.

) Chapter 7
) Case No. 8:18-bk-05689-MGW
)
) Hon. Judge Michael G. Williamson

**MOTION OF BANCO POPULAR DE PUERTO RICO FOR RELIEF FROM THE
AUTOMATIC STAY**

**NOTICE AND OPPORTUNITY TO OBJECT
AND REQUEST FOR HEARING**

Pursuant to Local Rule 2002-4, the Court will consider the relief requested in this paper without further notice or hearing unless a party in interest files a response within 21 days from the date set forth on the attached proof of service, plus an additional 3 days for service if any party was served by U.S. Mail.

If you object to the relief requested in this paper, you must file a response with the Clerk of the Court at 801 N. FLORIDA AVENUE, SUITE 555, TAMPA, FLORIDA, 33602 and serve a copy on the movant's attorney, Brittney P. Baker, 200 Central Ave., Suite 2000, St. Petersburg, Florida 33701, and any other appropriate persons within the time allowed. If you file and serve a response within the time permitted, the Court will either schedule and notify you of a hearing or consider the response and grant or deny the relief requested without a hearing.

If you do not file a response within the time permitted, the Court will consider that you do not oppose the relief requested in the paper, will proceed to consider the paper without further notice or hearing, and may grant the relief requested.

Banco Popular de Puerto Rico, a successor in interest to Popular Mortgage (hereinafter "Banco Popular"), secured creditor in the captioned case, by its undersigned attorneys, and pursuant to Section 362(d) of the United States Bankruptcy Code (11 U.S.C. §101 et seq.) ("Bankruptcy Code") and Federal Rule of Bankruptcy Procedure 4001(a)(1), moves this Court for entry of an order granting it relief from the automatic stay with respect to the real property located at 7 301 Apartment, Camino de la Reina Condominium, Trujillo Alto, PR 00976 (the

“Property”). In support thereof, Banco Popular states as follows:

1. The Debtor, Catherine L. Moreno (hereinafter the “Debtor”), filed for relief under Chapter 7 of Title 11 of the United States Code (the “Bankruptcy Code”) on July 10, 2018 (the “Petition Date”).
2. Banco Popular has a secured interest in the Property by virtue of a mortgage executed by the Debtor in favor of Popular Mortgage, Inc. dated October 29, 2009 (“Mortgage”) to secure a note in the principal amount of \$95,613.00 (the “Note”). On December 31, 2012, Popular Mortgage, Inc. merged with Banco Popular de Puerto Rico. Attached hereto as Group Exhibit 1 are true and accurate copies of Mortgage, Note and the Certificate of Merger.
3. The legal description of the Property is as follows:

---PROPIEDAD HORIZONTAL: Apartamento número Siete guión Trescientos Uno (7-301) residencial de forma irregular, localizado en la primera planta del edificio número Siete (7) del Condominio Camino de la Reina, situado en la carretera estatal número Ocho Mil Ochocientos Sesenta (8,860), Barrio Las Cuevas, en el término municipal de Trujillo Alto, con un área de novecientos setenta y tres punto cincuenta y seis (973.56) pies cuadrados, equivalentes en noventa punto cuarenta y ocho (90.48) metros cuadrados. Son sus linderos los siguientes: por el Norte, en treinta y seis piés seis pulgadas (36'6"), con pared medianera que lo separa del apartamento número siete guión cuatrocientos uno (7-401), pasillo común, escalera común y elemento exterior común; por el Sur, en treinta y seis piés seis pulgadas (36'6"), con pared medianera que lo separa del apartamento número siete guión doscientos uno (7-201), por el Este, en treinta pies diez pulgadas (30'10"), con elemento exterior común; por el Oeste, en treinta pies diez pulgadas (30'10"), con elemento exterior común limitado. Este apartamento goza del uso exclusivo de un patio de uso común limitado con talud, según delimitado en el plano del apartamento, con un área de mil cuatrocientos ochenta punto cero tres (1,480.03) pies cuadrados, equivalentes a ciento treinta y siete punto cincuenta (137.50) metros cuadrados. Consta de balcón, sala, comedor, cocina, un (1) cuarto principal con baño y closet, dos (2) cuartos con closet y un (1) baño en el pasillo y closet. La puerta de entrada de este apartamento está situada en su lindero Este, que da acceso al pasillo, que a su vez se comunica con espacios comunes que conducen a la vía pública. Este apartamento tiene una participación de punto cero cero siete nueve tres cinco (.007935) por ciento en los elementos comunes generales del condominio. A este apartamento se le asignaron los espacios de estacionamiento identificados con los números doscientos quince (215) y doscientos dieciséis (216). -----

4. Pursuant to § 362(d) of the Bankruptcy Code, a party in interest may receive relief from the automatic stay:
 - (1) for cause, including the lack of adequate protection of an interest in property of such party in interest; or
 - (2) with respect to a stay of an act against property under subsection (a) of this section, if (A) the debtor does not have any equity in such property; and (B) such property is not necessary to an effective reorganization.
5. Banco Popular is entitled to stay relief under both §362(d)(1) and §362(d)(2) because the Debtor has defaulted on her obligations to Banco Popular, intends to surrender the Property, there is no material equity in the Property and the Property is not necessary for an effective reorganization.
6. Debtor, as the borrower under the Note and the owner of the Property, defaulted on her obligations to Banco Popular by failing to make ongoing monthly mortgage payments for the Property. As of August 8, 2018, the Debtor was eleven months in default for a total arrearage of \$7,706.12.
7. According to the Debtor's schedules, the Property is worth \$80,000.00, while Banco Popular is owed approximately \$85,452.81. As such, there is no material equity in the Property for the benefit of the bankruptcy estate.
8. The Property is not necessary for an effective reorganization as this is a Chapter 7 liquidation case and the Property is not the Debtor's personal residence.
9. Debtor's failure to remain current on his obligations to Banco Popular leaves Banco Popular's interests unprotected, and constitutes "cause" for relief from the automatic stay within the provisions of §362(d)(1) of the Bankruptcy Code. In addition, because there is

no material equity in the Property and the Property is not necessary for an effective reorganization, relief from stay is proper under §362(d)(2).

WHEREFORE, Banco Popular de Puerto Rico, prays that this Court enter an order:

- A. Lifting the automatic stay to permit to foreclose, take possession of, or otherwise dispose of the Property;
- B. Waiving the stay of enforcement pursuant to Rule 4001(a)(3); and
- C. Granting such other and further relief as this Court deems just and proper.

Dated: August 15, 2018.

/s/ Brittney P. Baker

Brittney P. Baker

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Attorneys for Banco Popular de
Puerto Rico

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Relief from the Automatic Stay has been furnished by Electronic Notice or Regular U.S. Mail on the 15th day of August 2018 to:

Catherine L. Moreno, 298 8th Street N., Unit 320, Saint Petersburg, FL 33701, *Debtor* (via U.S. Mail)

Jesse D Berkowitz, Berkowitz and Myer, 4900 Central Ave, St. Petersburg, FL 33707, *Debtor's Attorney* (via CM/ECF)

Stephen L Meininger, 707 North Franklin Street, Suite 850, Tampa, FL 33602, *Trustee* (via CM/ECF)

Richard M Dauval, LeavenLaw, 3900 First Street North, Suite 100, St. Petersburg, FL 33703, *Counsel for Trustee* (via CM/ECF)

United States Trustee - TPA7/13, Timberlake Annex, Suite 1200, 501 E Polk Street, Tampa, FL 33602, *U.S. Trustee* (via CM/ECF)

/s/ Brittney P. Baker

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